

REMARKS

The Examiner is thanked for the careful review of this application.

Claims 1-3, 5, 6, and 8-23 are pending in the present application. Claims 1, 5, 8, 11, and 14-19 are independent claims. Claims 22-23 are added by this Amendment, with support in the Specification present at least within Paragraph [0044].

It is believed that this Amendment, in conjunction with the following remarks, place the application in immediate condition for allowance or at least presents the claims in better form for consideration on Appeal. Accordingly, entry of this Amendment and favorable consideration of the application are respectfully requested in view of the foregoing amendments and the following remarks.

Reply to Examiner's Response to Arguments

Since the Examiner has maintained the prior rejections and has provided arguments in support of the Examiner's position, the Applicants will address the Examiner's response first.

1. Rejection of Claims 1-3, 8-10, 16, 18, 20 and 21 under 35 U.S.C. § 101

The Examiner has indicated that "[t]he mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory" (*e.g., see* Page 6 of the 3/18/2009 Final Rejection). Accordingly, by the present Amendment, the Applicants have moved the communication-device feature into the body of independent claims 1, 8, 16, and 18. Accordingly, the Applicants respectfully request that the Examiner withdraw this rejection.

2. Rejection of Claims 1-3, 5, 6 and 8-19 under 35 U.S.C. § 103(a) over Del Sesto in view of Coyle

Detailed discussions of Del Sesto and Coyle have been provided by the Applicants in the Amendment filed on 1/8/2009. For brevity, the Applicants again note that (i) Del Sesto relates to

a negotiation between a product developer/seller and an advertiser related to the price the product seller must pay to the advertiser for a given amount of advertising units, (ii) whereas Coyle discloses a moderator that runs an auction by which carriers can bid on prices of communication services offered to subscribers.

By the present Amendment, the Applicants have modified the “one or more products” in the claim language to read as “one or more client-executable applications.” Thus, for example, independent claim 1 now recites “wherein the clients of the first of the multiple provider entities are capable of purchasing the at least one of the one or more client-executable applications according to the first modification of the first data”.

Regarding Coyle, the Applicants note that Coyle is directed to providing a general communication service to subscribers (*e.g.*, cost per minute of service, etc.), but is not related to negotiating a price for the download of a particular application that is executable on the device. Thus, in Coyle, the actual programs or applications downloaded to subscribers that receive service in accordance with a winning bid are negotiated separately from the price paid for the service itself (*i.e.*, *even if a phone has call-service, the user must still separately negotiate and/or pay for an application for the phone in order to download the application*). Regarding Del Sesto, even if the advertisements are run as some type of application, one skilled in the art would recognize that clients using the applications do not purchase advertisements.

Thus, Applicants respectfully submit that the combination of Del Sesto and Coyle will result in a negotiation related to the purchase of an application by a client “wherein the clients of the first of the multiple provider entities are capable of purchasing the at least one of the one or more client-executable applications according to the first modification of the first data” as recited in independent claim 1 and similarly recited in independent claims 5, 8, 11 and 14-19.

Further, Coyle and Del Sesto are not properly combinable. Coyle's manner of permitting subscribers to obtain an auctioned-service price for communication service could be used, followed by a subscriber obtaining the service to be provided with an advertisement as in Del Sesto. This combination would not result in a negotiation related to an application executable on a client device available for purchase by the client.

Accordingly, the Applicants respectfully request that the Office withdraw this art grounds of rejection.

3. Allowance also requested for newly added dependent claims 22-23

Dependent claim 22 recites "wherein the first data corresponds to a set of download terms related to a purchase of the one or more client-executable applications by prospective clients, and the first modification corresponds to a modified set of the download terms." Coyle's communication service purchasable by subscribers is not related to download terms of an application, and Del Sesto's advertisement negotiation only negotiates the terms by which the advertiser will agree to advertise the product seller's product/advertisement, which cannot be said to be related to download terms offered to the subscriber that actually receives the advertisement. Dependent claim 23 recites more specific examples of the download terms, which are also not taught or suggested in either reference.

Accordingly, the Applicants respectfully request that the Office allow claims 22 and 23.

SUMMARY

Since the Office has maintained his rejection of claims 1-3, 5, 6 and 8-21 under 35 U.S.C. §103 as noted above, the Applicants once again traverse this rejection. The Applicants expressly maintain the reasons from the prior responses to clearly indicate on the record that the Applicants have not conceded any of the previous positions relative to the maintained rejections.

For brevity, the Applicants expressly incorporate the prior arguments presented in the 01/08/2009 response without a literal rendition of those arguments in this response.

For at least the foregoing reasons and the reasons set forth in the Applicants' response of 01/08/2009, it is respectfully submitted that claims 1, 5, 8, 11 and 14-19 are distinguishable over the applied art. The remaining dependent claims are allowable at least by virtue of their dependency on the above-identified independent claims. See MPEP § 2143.01. Moreover, these claims recite additional subject matter, which is not suggested by the documents taken either alone or in combination.

Reconsideration and issuance of the present application is respectfully requested.

CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated May 8, 2009

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By: /Fariba Yadegar-Bandari/

Fariba Yadegar-Bandari

Reg. No. 53,805

(858) 651-0397

QUALCOMM Incorporated
Attn: Patent Department
5775 Morehouse Drive
San Diego, California 92121-1714
Facsimile: (858) 658-2502